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**FILED**

Date 9/3/15 By 

7 **BEFORE THE**  
8 **STRUCTURAL PEST CONTROL BOARD**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2016-14

11 **ROSE TERMITE, INC., YESENIA LOPEZ,**  
12 **PRESIDENT, DELORES ANGEL CHAVEZ,**  
13 **PRESIDENT**  
14 **4365 Lowell Street, Unit G**  
15 **Ontario, CA 91761**

**ACCUSATION**

14 **Company Registration No. PR 6992, Branches**  
15 **2 & 3**

15 **BILL GERARD MARSH**  
16 **219 S. New Ave. #13A**  
17 **Monterey Park, CA 91755**

17 **Operator's License No. OPR 11121,**

18 **JUAN NOE ROMERO**  
19 **8000 Olive Drive**  
20 **Bakersfield, CA 93308**

20 **Operator License No. OPR 12462,**

21 **and**

22 **DONALD LYNN ARCHIE II**  
23 **3741 Merced Drive, Suite F**  
24 **Riverside, CA 92503**

24 **Field Representative No. FR 36431**

25 Respondents.

1 Complainant alleges:

2 PARTIES

3 1. Complainant Susan Saylor brings this Accusation solely in her official capacity as the  
4 Registrar and Executive Officer of the Structural Pest Control Board, Department of Consumer  
5 Affairs.

6 2. On March 19, 2014, the Structural Pest Control Board issued Company Registration  
7 Number PR 6992 in Branches 2 and 3 to Rose Termite, Inc. At that time, the company's  
8 president and sole shareholder was Yesenia Lopez and its qualifying manager was Bill Gerard  
9 Marsh, who is also named in this action. On September 5, 2014, Mr. Marsh disassociated as the  
10 company's qualifying manager. On December 9, 2014, Juan Noe Romero, who is also named in  
11 this action, became the company's qualifying manager. Also on that day, Delores A. Chavez  
12 became the company's president and sole shareholder. On January 30, 2015, Mr. Romero  
13 disassociated as the company's qualifying manager. On February 10, 2015 the Board suspended  
14 the Company Registration for failing to have a qualifying manager. On May 22, 2015, the Board  
15 cancelled the Company Registration per the written request of Delores A. Chavez. Nevertheless,  
16 the Company Registration was in force at all times relevant to this Accusation's charges.

17 3. On June 9, 2005, the Board issued Operator's License Number OPR 11121 to Bill  
18 Gerard Marsh. The license was in effect at all times alleged in this Accusation and will expire on  
19 June 30, 2016 unless renewed.

20 4. On December 20, 2012, the Structural Pest Control Board issued Operator License  
21 Number OPR 12462 to Juan Noe Romero. The license was in effect at all times alleged in this  
22 Accusation, but it expired on June 30, 2015 and has not been renewed.

23 5. On September 17, 2003, the Structural Pest Control Board issued Field  
24 Representative Number FR 36431 to Donald Lynn Archie II. The license was in effect at all  
25 times alleged in this Accusation, but it expired on June 30, 2015 and has not been renewed.

26 JURISDICTION

27 6. This Accusation is brought before the Board under the following laws. All section  
28 references are to the Business and Professions Code unless otherwise indicated.

1           7.     Section 8620 authorizes the Board to discipline licensees.

2           8.     Section 8625 grants the Board jurisdiction to initiate and proceed with discipline  
3 against a suspended or expired license.

4                               SCOPE OF DISCIPLINARY AUTHORITY

5           9.     Section 8624 in relevant part provides for vicarious liability for qualifying managers:

6                        “If the board suspends or revokes an operator’s license and one or more  
7 branch offices are registered under the name of the operator, the suspension or  
revocation may be applied to each branch office.

8                        If the operator is the qualifying manager, a partner, responsible officer, or  
9 owner of a registered structural pest control company, the suspension or revocation  
may be applied to the company registration.

10                       The performance by any partnership, corporation, firm, association,  
11 or registered company of any act or omission constituting a cause for disciplinary  
12 action, likewise constitutes a cause for disciplinary action against any licensee who, at  
the time the act or omission occurred, was the qualifying manager, a partner,  
responsible officer, or owner of the partnership, corporation, firm, association, or  
registered company whether or not he or she had knowledge of, or participated in, the  
prohibited act or omission.”

13           10.    Section 8654 provides that if discipline is imposed on a company registration, it may  
14 also be imposed if a company’s officers, qualifying managers, directors, or associates if they  
15 knew of or participated in the prohibited acts:

16                        “Any individual who has been denied a license for any of the reasons  
17 specified in Section 8568, or who has had his or her license revoked, or whose license  
18 is under suspension, or who has failed to renew his or her license while it was under  
19 suspension, or who has been a member, officer, director, associate, qualifying  
20 manager, or responsible managing employee of any partnership, corporation, firm, or  
21 association whose application for a company registration has been denied for any of  
22 the reasons specified in Section 8568, or whose company registration has been  
23 revoked as a result of disciplinary action, or whose company registration is under  
suspension, and while acting as such member, officer, director, associate, qualifying  
manager, or responsible managing employee had knowledge of or participated in any  
of the prohibited acts for which the license or registration was denied, suspended or  
revoked, shall be prohibited from serving as an officer, director, associate, partner,  
qualifying manager, or responsible managing employee of a registered company, and  
the employment, election or association of such person by a registered company is a  
ground for disciplinary action.”

24                               STATUTES

25           11.    In pertinent part, section 8516(b) and its subdivisions, which follow in separate  
26 paragraphs, provide requirements for inspections relating to wood destroying pests or organisms:

27                        “No registered company or licensee shall commence work on a contract,  
28 or sign, issue, or deliver any documents expressing an opinion or statement relating to  
the absence or presence of wood destroying pests or organisms until an inspection has

1 been made by a licensed Branch 3 field representative or operator. The address of  
2 each property inspected or upon which work is completed shall be reported on a form  
prescribed by the board and shall be filed with the board no later than 10 business  
days after the commencement of an inspection or upon completed work.

3 Every property inspected pursuant to this subdivision or Section 8518  
4 shall be assessed a filing fee pursuant to Section 8674.

5 Failure of a registered company to report and file with the board the  
6 address of any property inspected or work completed pursuant to Section 8518 or this  
section is grounds for disciplinary action and shall subject the registered company to  
a fine of not more than two thousand five hundred dollars (\$2,500).

7 A written inspection report conforming to this section and on a form  
8 approved by the board shall be prepared and delivered to the person requesting the  
inspection or to the person's designated agent within 10 business days of the  
9 inspection, except that an inspection report prepared for use by an attorney for  
litigation purposes is not required to be reported to the board. The report shall be  
10 delivered before work is commenced on any property. The registered company shall  
retain for three years all original inspection reports, field notes, and activity forms.

11 Reports shall be made available for inspection and reproduction to the  
12 executive officer of the board or his or her duly authorized representative during  
business hours. Original inspection reports or copies thereof shall be submitted to the  
13 board upon request within two business days."

14 12. Section 8516, subdivision (b)(1) provides in pertinent part that an inspection report  
15 shall include the date of the inspection and the name of the licensed field representative or  
16 operator making the inspection.

17 13. Section 8516, subdivision (b)(2) provides in pertinent part, that an inspection report  
18 shall include the name and address of the person or firm ordering the report.

19 14. Section 8516, subdivision (b)(3) provides in pertinent part, that an inspection report  
20 shall include the name and address of any person who is a party in interest.

21 15. Section 8516, subdivision (b)(4) provides in pertinent part, that an inspection report  
22 shall include the address or location of the property.

23 16. Section 8516, subdivision (b)(6) provides in pertinent part, that an inspection report  
24 shall include a foundation diagram or sketch of the structure or structures or portions of the  
25 structure or structures inspected, indicating thereon the approximate location of any infested or  
26 infected areas evident, and the parts of the structure where conditions that would ordinarily  
27 subject those parts to attack by wood destroying pests or organisms exist.

1        17. Section 8516, subdivision (b)(7) provides in pertinent part, that an inspection report  
2 shall contain information regarding the substructure, foundation walls and footings, porches,  
3 patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters,  
4 fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject  
5 to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to  
6 infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade  
7 levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be  
8 reported.

9        18. Section 8516, subdivision (b)(10) provides in pertinent part, that an inspection report  
10 shall contain recommendations for corrective measures.

11        19. Section 8516, subdivision (c) provides in full:

12                    “(c) At the time a report is ordered, the registered company or  
13 licensee shall inform the person or entity ordering the report, that a separated report is  
14 available pursuant to this subdivision. If a separated report is requested at the time the  
inspection report is ordered, the registered company or licensee shall separately  
identify on the report each recommendation for corrective measures as follows:

15                    (1) The infestation or infection that is evident.

16                    (2) The conditions that are present that are deemed likely to lead to  
17 infestation or infection.

18                    If a registered company or licensee fails to inform as required by this  
19 subdivision and a dispute arises, or if any other dispute arises as to whether this  
20 subdivision has been complied with, a separated report shall be provided within 24  
hours of the request but, in no event, later than the next business day, and at no  
additional cost.”

21        20. Section 8518 requires companies to file notices of work completed:

22                    “(a) When a registered company completes work under a contract, it shall  
23 prepare, on a form prescribed by the board, a notice of work completed and not  
24 completed, and shall furnish that notice to the owner of the property or the owner’s  
agent within 10 business days after completing the work. The notice shall include a  
statement of the cost of the completed work and estimated cost of work not  
25 completed.

26                    (b) The address of each property inspected or upon which work was  
27 completed shall be reported on a form prescribed by the board and shall be filed with  
the board no later than 10 business days after completed work.

28                    (c) A filing fee shall be assessed pursuant to Section 8674 for every  
property upon which work is completed.

1 (d) Failure of a registered company to report and file with the board the  
2 address of any property upon which work was completed pursuant to subdivision (b)  
3 of Section 8516 or Section 8518 is grounds for disciplinary action and shall subject  
4 the registered company to a fine of not more than two thousand five hundred dollars  
5 (\$2,500).

6 (e) The registered company shall retain for three years all original notices  
7 of work completed, work not completed, and activity forms.

8 (f) Notices of work completed and not completed shall be made available  
9 for inspection and reproduction to the executive officer of the board or his or her duly  
10 authorized representative during business hours. Original notices of work completed  
11 or not completed or copies thereof shall be submitted to the board upon request within  
12 two business days."

13 21. Section 8550 prohibits unlicensed practice:

14 "(a) It is unlawful for any individual to engage or offer to engage in the  
15 business or practice of structural pest control, as defined in Section 8505, unless he or  
16 she is licensed under this chapter.

17 (b) Notwithstanding subdivision (a), an unlicensed individual may solicit  
18 pest control work on behalf of a structural pest control company only if the company  
19 is registered pursuant to this chapter, and the unlicensed individual does not perform  
20 or offer to perform any act for which an operator, field representative, or applicator  
21 license is required pursuant to this chapter. As used in this subdivision, to "solicit pest  
22 control work" means to introduce consumers to a registered company and the services  
23 it provides, to distribute advertising literature, and to set appointments on behalf of a  
24 licensed operator or field representative.

25 (c) It is unlawful for an unlicensed individual, soliciting pest control work  
26 on behalf of a registered structural pest control company pursuant to subdivision (b),  
27 to perform or offer to perform any act for which an operator, field representative, or  
28 applicator license is required, including, but not limited to, performing or offering  
pest control evaluations or inspections, pest identification, making any claims of pest  
control safety or pest control efficacy, or to offer price quotes other than what is  
provided and printed on the company advertising or literature, or both.

(d) It is also unlawful for any unlicensed individual to offer any opinion,  
or to make any recommendations, concerning the need for structural pest control  
work in general, or in connection with a particular structure.

(e) It is unlawful for any firm, sole proprietorship, partnership,  
corporation, association, or other organization or combination thereof to engage or  
offer to engage in the practice of structural pest control, unless registered in  
accordance with Article 6 (commencing with Section 8610)."

22 22. Section 8610 provides requirements for corporate ownership of structural pest control  
23 companies:

24 "(a) Every company that engages in the practice of structural pest  
25 control, as a sole proprietorship, partnership, corporation, or other organization or any  
26 combination thereof, shall be registered with the Structural Pest Control Board. Each  
27 application for a company registration shall include the name of the company's owner  
28 if it is a sole proprietorship, the names of the partners, if it is a partnership, or the

names of its officers and shareholders with 10 percent or more ownership interest, if it is a corporation, and the address of the company's principal office in this state.

"(b)(1) A company registration shall not be issued to an applicant that has an officer, director, qualifying manager, responsible managing employee, or an individual who otherwise exercises dominion or control over the company, whose license or registration is revoked or suspended at the time of the application as the result of disciplinary action pursuant to this chapter.

"(2) A company registration shall not be issued to an applicant that has an officer, director, qualifying manager, responsible managing employee, or an individual who otherwise exercises dominion or control over the company, who owns or has owned in the past more than a 10 percent interest in another sole proprietorship, partnership, corporation, or other organization that has its license or registration revoked or suspended at the time of the application as the result of disciplinary action pursuant to this chapter.

"(c) Each registered company shall designate an individual or individuals who hold an operator's license to act as its qualifying manager or managers. The qualifying manager or managers must be licensed in each branch of pest control in which the company engages in business. The designated qualifying manager or managers shall supervise the daily business of the company and shall be available to supervise and assist all employees of the company, in accordance with regulations which the board may establish."

23. Section 8622 requires companies to bring properties' into compliance within 30 days of receiving notice from the Board of violations of these statutes or Board regulations:

"(a) When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring the property into compliance, unless an extension is authorized by the board, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars (\$125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

(b) The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. If a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged."

24. Section 8636 authorizes discipline for violating building codes: "Disregard and violation of the buildings laws of the state, or of any of its political subdivisions, or of the safety

1 laws, labor laws, health laws, or compensation insurance laws of the state relating to the practice  
2 of structural pest control is a ground for disciplinary action."

3 25. Section 8638 authorizes discipline for failing to complete operations for the contract  
4 price: "[f]ailure on the part of a registered company to complete any operation or construction  
5 repairs for the price stated in the contract for such operation or construction repairs or in any  
6 modification of such contract is a ground for disciplinary action."

7 26. Section 8641 authorizes discipline for failing to comply with Structural Pest Control  
8 Act and Board regulations, or for furnishing a report of inspection without actually making an  
9 inspection:

10 "Failure to comply with the provisions of this chapter, or any rule or  
11 regulation adopted by the board, or the furnishing of a report of inspection without  
12 the making of a bona fide inspection of the premises for wood-destroying pests or  
organisms, or furnishing a notice of work completed prior to the completion of the  
work specified in the contract, is a ground for disciplinary action."

13 27. Section 8642 authorizes discipline for gross negligence or fraud: "[t]he commission  
14 of any grossly negligent or fraudulent act by the licensee as a pest control operator, field  
15 representative, or applicator or by a registered company is a ground for disciplinary action."

16 28. Section 8644 authorizes discipline for fraud or misrepresentation after an inspection:

17 "Fraud or misrepresentation, after inspection, by any licensee or  
18 registered company engaged in pest control work of any infestation or infection of  
19 wood-destroying pests or organisms found in property or structures, or respecting any  
20 conditions of the structure that would ordinarily subject structures to attack by  
wood-destroying pests or organisms, whether or not a report was made pursuant to  
Sections 8516 and 8517 of this code, is a ground for disciplinary action."29.

21 30. Section 8652 authorizes discipline for failing to keep records and to make them  
22 available to Board representatives:

23 "Failure of a registered company to make and keep all inspection reports,  
24 field notes, contracts, documents, notices of work completed, and records, other than  
25 financial records, for a period of not less than three years after completion of any  
26 work or operation for the control of structural pests or organisms, is a ground for  
27 disciplinary action. These records shall be made available to the executive officer of  
28 the board or his or her duly authorized representative during business hours."



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31. California Code of Regulations, title 16, section 1937.14, sets the standard of care for

"All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations."

32. California Code of Regulations, title 16, section 1990, sets requirements for reports:

"(a) All reports shall be completed as prescribed by the board. Copies filed with the board shall be clear and legible. All reports must supply the information required by Section 8516 and the information regarding the pesticide or pesticides used as set forth in Section 8538, and shall contain or describe the following:

(1) Structural pest control license number of the person making the inspection.

(2) Signature of the Branch 3 licensee who made the inspection.

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or organisms.

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

(1) **Faulty Grade Level.** A faulty grade level exists when the top of any foundation is even with or below the adjacent earth. The existing earth level shall be considered grade.

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

(c) When an infestation of carpenter ants or carpenter bees is found in a structure, control measures may be applied by companies holding a Branch 2 or Branch 3 registration certificate. If a Branch 3 licensee discovers an infestation or evidence of carpenter ant or carpenter bee infestation while performing an inspection pursuant to section 8516, he or she shall report his or her findings and make

recommendations for controlling the infestation.

(d) Even though the licensee may consider the following areas inaccessible for purposes of inspection, the licensee must state specifically which of these areas or any other areas were not inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

(e) Information regarding all accessible areas of the structure including but not limited to the substructure, foundation walls and footings, porches, patios and steps, stairways, air vents, abutments, stucco walls, columns, attached structures or other parts of a structure normally subject to attack by wood-destroying pests or organisms.

(f) The following language shall appear just prior to the first finding/recommendation on each separated report:

'This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from infestation or infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section I or Section II.'

(g) Information must be reported regarding any wooden deck, wooden stairs or wooden landing in exterior exposure attached to or touching the structure being inspected. Portions of such structure that are not available for visual inspection must be designated as inaccessible."

33. In relevant part, California Code of Regulations, title 16, section 1991, provides requirements for recommendations for corrective measures:

"(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(1) Comply with the provisions of section 2516(c)(1) of Title 24 of the California Code of Regulations.

(2) Remove from the subarea all excessive cellulose debris in earth contact. This excludes shavings or other cellulose too small to be raked or stored goods not in earth contact. Stumps and wood imbedded in footings in earth contact shall be treated if removal is impractical.

(3) When evidence of moisture, infestations or infections exists as a result of faulty grade levels, earth fill planters or loose stucco, a recommendation

1 shall be made to correct the condition. Any method of controlling infestations arising  
2 from these conditions is considered adequate if the infestation is controlled.

3 (4) Comply with the provisions of section 2516(c)(6.1) of Title 24 of the  
4 California Code of Regulations (Effective July 1992).

5 (5) Structural members which appear to be structurally weakened by  
6 wood-destroying pests to the point where they no longer serve their intended purpose  
7 shall be replaced or reinforced. Structural members which are structurally weakened  
8 by fungus to the point where they no longer serve their intended purpose shall be  
9 removed or, if feasible, may remain in place if another structural member is installed  
10 adjacent to it to perform the same function, if both members are dry (below 20%  
11 moisture content), and if the excessive moisture condition responsible for the fungus  
12 damage is corrected. Structural members which appear to have only surface fungus  
13 damage may be chemically treated and/or left as is if, in the opinion of the inspector,  
14 the structural member will continue to perform its originally intended function and if  
15 correcting the excessive moisture condition will stop the further expansion of the  
16 fungus.

### 17 COST RECOVERY AND RESTITUTION

18 34. Section 125.3 authorizes the Board to ask an administrative law judge to direct  
19 licensees found to have violated licensing acts to pay their case's reasonable investigation and  
20 enforcement costs.

21 35. Government Code section 11519(d) in pertinent part authorizes the Board to require  
22 restitution of damages suffered as a condition of probation in the event probation is ordered.

### 23 FACTUAL SUMMARY

#### 24 FIRST OF THREE PROJECTS: VAN PELT AVENUE PROJECT

25 36. In April 2014, Rose Termite, Inc. through its Field Representative, Donald Lynn  
26 Archie II, performed a wood destroying pests and organisms inspection for a house on 1175 Van  
27 Pelt Avenue, in the City of Los Angeles. Mr. Archie then prepared a separate completed inspection  
28 report. The inspection report stated that Mr. Archie found wood destroying organisms, including  
subterranean termites and fungus/dryrot in the house.

37. The homeowner agreed to and did pay Rose Termite, Inc. \$1,445 to eliminate the wood  
destroying organisms as recommended in Mr. Archie's inspection report.

38. In May 2014, Rose Termite, Inc. and Mr. Archie issued a Standard Notice of Work  
Completed and Not Completed (Completion Notice) for the Van Pelt Avenue property certifying  
their work had been done and the property was "now free of evidence of active infestation or  
infection in the visible and accessible areas."

1           39. In September 2014, a Board specialist inspected the house and found it riddled with  
2 termites and fungi damage. Among the problems he identified were the following:

- 3           a. Cellulose debris in the substructure.  
4           b. Evidence of subterranean termites and subterranean termite damage in the  
5 substructure.  
6           c. Evidence of drywood termites and drywood termite damage in the substructure.  
7           d. Fungus (decay fungi) damage in the substructure.  
8           e. Water stains, which are evidence of excessive moisture, in the substructure.  
9           f. White powder thrown around the substructure.  
10           g. No evidence of a termite treatment having been performed in the substructure.  
11           h. Evidence of drywood termites and drywood termite damage in the attic.  
12           i. Inaccessible portions of the attic due to construction.  
13           j. Evidence of drywood termites and drywood termite damage at the carport.  
14           k. Decay fungi damage at the carport.  
15           l. Substandard repair work completed at the carport.  
16           m. Evidence of subterranean termites and subterranean termite damage at the interior  
17 flooring and doorjambs.  
18           n. Evidence of drywood termites at the front bathroom window.  
19           o. Dead drywood termite swarms on a bedroom and the hallway floors.  
20           p. Unreported repair work completed in the house eaves.  
21           q. No evidence of recommended work being completed in the house eaves.  
22           r. No evidence that the reported decay fungi damage in the house eaves ever existed.  
23           s. Inaccessible areas at the house, due to boxed eaves.

24           40. In October 2014, the Board's specialist prepared a Report of Findings identifying 24  
25 violations of Board statutes and regulations. The Board staff sent the report to Rose Termite,  
26 Inc., Mr. Archie, and Bill Gerard Marsh, Rose Termite, Inc.'s qualifying manager.

27           41. In October 2014, a Board specialist discussed the Report of Findings with Mr. Marsh,  
28 the qualifying manager. Mr. Marsh said he had agreed to be paid \$500 on a regular basis by Rose  
Termite, Inc. to serve as their qualifying manager. Even though he was listed as the company's

1 qualifying manager beginning in March 2014, one month before the Van Pelt Avenue project  
2 began, he admitted he did not supervise that project in any way – he thought his association with  
3 the company began in May 2014. He described his interactions with Rose Termite, Inc. by  
4 saying, “[t]his is spooky shit.”

5 42. After that meeting, Mr. Marsh promptly resigned as the qualifying manager, sending  
6 a letter to the Board stating this was “due to lack of cooperation” by the company.

7 43. Following Mr. Marsh’s resignation, the Board suspended Rose Termite, Inc.’s  
8 registration for failing to have a qualifying manager.

9 44. In November 2014, the Board specialist received a series of emails and a letter from  
10 Rose Termite, Inc. pledging to correct the problems at the Van Pelt Avenue property. But these  
11 emails and letter were mysteriously unsigned – whoever was sending them used email addresses  
12 like “service@rosetermite.com” and signed the emails and letters as “Rose Termite.” At that  
13 time, the company did not have anyone serving as a qualifying manager.

14 45. That same month, the Board’s specialist went to Rose Termite Inc.’s address of  
15 record, 337 North Vineyard Avenue, No. 507, Ontario, CA 91764, and found it to be fictitious:  
16 there was no Rose Termite, Inc. there – indeed, there were no unit numbers above No. 401.

17 46. No one from Rose Termite, Inc. ever met with the Board specialist and the company  
18 did not fix the problems at the Van Pelt Avenue property discussed in the Report of Findings.

19 47. The Board specialist estimated it would cost the homeowner \$50,000 to correct the  
20 problems he found.

### 21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Failure to Complete Work)**

23 **(Against Rose Termite, Inc. and Bill Gerard Marsh)**

24 48. Respondent Rose Termite, Inc. and Bill Gerard Marsh are subject to disciplinary  
25 action under section 8638 because they failed to treat the subterranean termites in the Van Pelt  
26 Avenue property’s substructure, although they contracted to do such treatment.

27 49. Complainant realleges paragraphs 36 to 47 and their subparagraphs.  
28

1        50. Rose Termite, Inc.'s inspection report stated in Finding 1.A. that there was  
2 "[e]vidence of subterranean termite infestation." The report recommended that there be "Pressure  
3 'ROD' treat, trench application or low pressure spot spray as necessary. Break accessible sub  
4 tubes."

5        51. The Board's specialist found no evidence that Rose Termite, Inc. complied with this  
6 recommendation and found that termites remained in the house's substructure.

7        52. The homeowner paid Rose Termite, Inc. \$335 for its purported work on the home's  
8 substructure.

9                                    **SECOND CAUSE FOR DISCIPLINE**

10                    **(Failure to Complete Work in a Quality and Workmanlike Manner)**

11                                    **(Against Rose Termite, Inc. and Bill Gerard Marsh)**

12        53. Respondent Rose Termite, Inc. and Bill Gerard Marsh are subject to disciplinary  
13 action under section 8638 in conjunction with California Code of Regulations, title 16, section  
14 1937.14 for failing to complete the work on the Van Pelt Avenue project in a quality and  
15 workmanlike manner.

16        54. Complainant realleges paragraphs 36 to 47 and 50-52 and their subparagraphs.

17                                    **THIRD CAUSE FOR DISCIPLINE**

18                    **(Failure to Comply with Report of Findings within 30 Days)**

19                                    **(Against Rose Termite, Inc. and Bill Gerard Marsh)**

20        55. Respondent Rose Termite, Inc. and Bill Gerard Marsh subject to disciplinary action  
21 under sections 8622 and 8641 (failing to comply with Structural Pest Control Act) because they  
22 failed to comply with the Board's notice and Report of Findings of noncompliance within 30 days  
23 for the Van Pelt Avenue project.

24        56. Complainant realleges paragraphs 36 to 47 and 50-52 and their subparagraphs.

25        57. Rose Termite, Inc. and Mr. Marsh received the Board's notice and Report of Findings  
26 on or about October 23, 2014 and did not correct the identified problems (since it did not have a  
27 qualified manager) or make any arrangements to have another licensed company correct the  
28 problems at the Van Pelt Avenue project within 30 days, or at all.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Failure to Report Excessive Cellulose Debris)**

3 **(Against Donald Lynn Archie II)**

4 58. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
5 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, sections  
6 1990(b)(3) and 1990(e) for failing to report the excessive cellulose debris in the substructure of  
7 the Van Pelt Avenue house when he prepared his wood destroying pests and organisms inspection  
8 report and his Completion Notice report.

9 59. Complainant realleges paragraphs 36 to 40.

10 **SIXTH CAUSE FOR DISCIPLINE**

11 **(Failure to Report the Full Extent of Subterranean Termites and Termite Damage)**

12 **(Against Donald Lynn Archie II)**

13 60. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
14 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, sections  
15 1990(a)(3), 1990(a)(4), and 1990(e) for failing to report the full extent of the evidence of  
16 subterranean termites and termite damage in the substructure, entryway flooring, front door  
17 doorjambs, front bathroom doorjamb, and the front bathroom flooring of the Van Pelt Avenue  
18 house when he prepared his wood destroying pests and organisms inspection report and his  
19 Completion Notice report.

20 61. Complainant realleges paragraphs 36 to 40.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Failure to Report Evidence of Drywood Termites and Termite Damage)**

23 **(Against Donald Lynn Archie II)**

24 62. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
25 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, sections  
26 1990(a)(3) and 1990(e) for failing to report the full extent of the evidence of drywood termites  
27 and termite damage in the substructure, in the attic, and in the carport of the Van Pelt Avenue  
28

1 house when he prepared his wood destroying pests and organisms inspection report and his  
2 Completion Notice report.

3 63. Complainant realleges paragraphs 36 to 40.

4 **EIGHTH CAUSE FOR DISCIPLINE**

5 **(Failure to Report Fungus and Dry Rot)**

6 **(Against Donald Lynn Archie II)**

7 64. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
8 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, sections  
9 1990(a)(3), 1990(a)(4) and 1990(e) for failing to report the decay fungi or dry rot (decay fungi  
10 damage) in the substructure framing of the Van Pelt Avenue house when he prepared his wood  
11 destroying pests and organisms inspection report and his Completion Notice report.

12 65. Complainant realleges paragraphs 36 to 40.

13 **NINTH CAUSE FOR DISCIPLINE**

14 **(Failure to Report Evidence of Commonly Controllable Moisture Condition)**

15 **(Against Donald Lynn Archie II)**

16 66. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
17 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, sections  
18 1990(b)(5) and 1990(e) for failing to report the evidence of water stains, a commonly controllable  
19 moisture condition, of the Van Pelt Avenue house, when he prepared his wood destroying pests  
20 and organisms inspection report and his Completion Notice report.

21 67. Complainant realleges paragraphs 36 to 40.

22 **TENTH CAUSE FOR DISCIPLINE**

23 **(Failure to Report Inaccessible Portions of Structure)**

24 **(Against Donald Lynn Archie II)**

25 68. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
26 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, section  
27 1990(e) for failing to report that a portion of the attic of the Van Pelt Avenue house was  
28



1 inaccessible when he prepared his wood destroying pests and organisms inspection report and his  
2 Completion Notice report.

3 69. Complainant realleges paragraphs 36 to 40.

4 **ELEVENTH CAUSE FOR DISCIPLINE**

5 **(Failure to Make Proper Finding and Recommendation)**

6 **(Against Donald Lynn Archie II)**

7 70. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
8 8516(b)(6), 8516(b)(7), and 8516(b)(10) in conjunction with California Code of Regulations, title  
9 16, sections 1990(b)(5), 1990(e), and 1991(a)(5) for failing to identify the commonly controllable  
10 moisture condition responsible for the infections at the Van Pelt Avenue house and for making no  
11 recommendation to correct this condition when he prepared his wood destroying pests and  
12 organisms inspection report and his Completion Notice report.

13 71. Complainant realleges paragraphs 36 to 40.

14 **TWELFTH CAUSE FOR DISCIPLINE**

15 **(Fraud or Misrepresentation After Inspection)**

16 **(Against Donald Lynn Archie II)**

17 72. Respondent Donald Lynn Archie II is subject to disciplinary action under section  
18 8644 for fraud or misrepresentation after inspection for claiming to have completed and  
19 remediated decay fungi damage at the boxed eaves on the southwestern, eastern, and northern  
20 sides of the Van Pelt Avenue house, when in fact, the company did not perform work in this area  
21 and Board's specialist did not find any evidence of decay fungi damage in this area.

22 73. Complainant realleges paragraphs 36 to 40.

23 **FACTUAL SUMMARY**

24 **SECOND OF THREE PROJECTS: LATELY CIRCLE PROPERTY**

25 74. In April 2014, Rose Termite, Inc. through its Field Representative, Donald Lynn  
26 Archie II, performed a wood destroying pests and organisms inspection for a house on 44073  
27 Lately Circle in the City of Hemet in Riverside County. Mr. Archie then prepared a separate  
28

1 completed inspection report. The inspection report stated that Mr. Archie found fungus/dryrot in  
2 the house and he recommended the replacement of dry-rot-damaged wood.

3 75. The homeowner agreed to and did pay Rose Termite, Inc. \$598 to eliminate the wood  
4 destroying fungi by replacing the wood based on the recommendation in Mr. Archie's inspection  
5 report.

6 76. In late April 2014, Rose Termite, Inc. and Mr. Archie issued a Standard Notice of  
7 Work Completed and Not Completed (Completion Notice) for the Lately Circle property  
8 certifying their work had been done and the property was "now free of evidence of active  
9 infestation or infection in the visible and accessible areas."

10 77. In September 2014, a Board specialist inspected the house and found it still had  
11 fungus and decay fungi damage. He identified the following problems:

- 12 a. Fungus and decay fungi damage at the home's rear wood deck and staircase framing.
- 13 b. Substandard repair work completed at the rear wood deck and staircase framing.
- 14 c. Inaccessible areas at the rear wood deck framing.

15 78. In October 2014, the Board's specialist prepared a Report of Findings identifying 5  
16 violations for Rose Termite, Inc.'s work at the Lately Circle property. The Board staff sent the  
17 report to Rose Termite, Inc., Mr. Archie, and Bill Gerard Marsh, Rose Termite, Inc.'s qualifying  
18 manager.

19 79. In October 2014, a Board specialist discussed the Report of Findings for the Lately  
20 Avenue property with Mr. Marsh, the qualifying manager, at the same time they discussed the  
21 Report of Findings for the Van Pelt Avenue property, as discussed above. As with the Van Pelt  
22 Avenue property, Mr. Marsh denied responsibility for Rose Termite Inc.'s work on the Lately  
23 Avenue project because he thought his work as the company's qualifying manager did not begin  
24 until May 2014, even though the company represented to the Board that he was its qualifying  
25 manager as of March 2014. Marsh admitted he did not supervise the company's work at the  
26 Lately Circle property.

27 80. After that meeting, Mr. Marsh promptly resigned as the qualifying manager, sending  
28 a letter to the Board stating this was "due to lack of cooperation" by the company.

1        81. Following Mr. Marsh's resignation, the Board suspended Rose Termite, Inc.'s  
2 registration for failing to have a qualifying manager.

3        82. The Board's specialist also determined that Rose Termite's Inc.'s on the Lately Circle  
4 property required a Riverside County building permit and a business license, neither of which  
5 Rose Termite, Inc. obtained.

6        83. As with the Van Pelt Avenue property, after the Board sent its Report of Findings to  
7 Rose Termite, Inc., it began receiving unsigned emails from the company pledging to correct the  
8 Lately Circle property's problems and requesting a meeting. But no meeting ever occurred and  
9 the company never corrected the problems.

10       84. The Board specialist estimated it would cost the homeowner \$3,800 to correct the  
11 problems he found.

12                                    **THIRTEENTH CAUSE FOR DISCIPLINE**

13                    (Failure to Complete Work in a Quality and Workmanlike Manner)

14                    (Against Rose Termite, Inc. and Bill Gerard Marsh)

15        85. Respondent Rose Termite, Inc. and Bill Gerard Marsh are subject to disciplinary  
16 action under section 8638 in conjunction with California Code of Regulations, title 16, section  
17 1937.14 for failing to complete the work on the Lately Circle property in a quality and  
18 workmanlike manner because they failed to fully remediate the decay fungi damage on the  
19 home's rear wood deck, including its framing and staircase framing, and failed to properly install,  
20 support, and nail replacement wood members on the deck and its framing.

21        86. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

22                                    **FOURTEENTH CAUSE FOR DISCIPLINE**

23                    (Failure to Comply With County Building Code Laws)

24                    (Against Rose Termite, Inc. and Bill Gerard Marsh)

25        87. Respondent Rose Termite, Inc. and Bill Gerard Marsh are subject to disciplinary  
26 action under section 8636 for failing to obtain a building permit from Riverside County for its  
27 work on the rear deck of the Lately Circle property, including the replacement of wood framing  
28 supporting the second story of the deck and its staircase.

1 88. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

2 **FIFTEENTH CAUSE FOR DISCIPLINE**

3 **(Failure to Comply with Report of Findings within 30 Days)**

4 **(Against Rose Termite, Inc. and Bill Gerard Marsh)**

5 89. Respondent Rose Termite, Inc. and Bill Gerard Marsh are subject to disciplinary  
6 action under sections 8622 and 8641 because they failed to comply within 30 days with the  
7 Board's notice and Report of Findings of noncompliance for the Lately Circle project.

8 90. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

9 91. Rose Termite, Inc. and Mr. Marsh received the Board's notice and Report of Findings  
10 on or about October 17, 2014 and did not correct the identified problems (since it did not have a  
11 qualified manager) or make any arrangements to have another licensed company correct the  
12 problems at the Lately Circle property within 30 days, or at all.

13 **SIXTEENTH CAUSE FOR DISCIPLINE**

14 **(Failure to Make Records Available to Board)**

15 **(Against Rose Termite, Inc. and Bill Gerard Marsh)**

16 92. Respondent Rose Termite, Inc. and Bill Gerard Marsh are subject to disciplinary  
17 action under section 8652 for failing to make records available to a Board specialist, a duly  
18 authorized representative of the Board, during business hours, or at all, upon request.

19 93. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

20 94. The Board specialist requested from Rose Termite Inc. its inspection report and  
21 completion notice for the Lately Circle property by email on November 18, 2014 and November  
22 20, 2014. An unnamed company representative responded, promising to produce those records.  
23 But the company never produced them or made them available to the specialist.

24 **SEVENTEENTH CAUSE FOR DISCIPLINE**

25 **(Failure to Make Proper Finding and Recommendation)**

26 **(Against Donald Lynn Archie II)**

27 95. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
28 8516(b)(6), 8516(b)(7), and 8516(b)(10) in conjunction with California Code of Regulations, title

1 16, sections 1990(b)(5), 1990(e), and 1991(a)(5) for failing to make a proper finding and  
2 recommendation regarding the decay fungi damage on the rear deck of the Lately Circle property.  
3 Mr. Archie failed to identify the excessive moisture condition causing the infections and made no  
4 recommendation to correct this condition when he prepared his wood destroying pests and  
5 organisms inspection report and his Completion Notice report.

6 96. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

7 **EIGHTEENTH CAUSE FOR DISCIPLINE**

8 **(Failure to Report Fungus)**

9 **(Against Donald Lynn Archie II)**

10 97. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
11 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, sections  
12 1990(a)(3), 1990(a)(4) and 1990(e) for failing to report the full extent of the decay fungi damage  
13 in the rear wood deck of the Lately Circle property when he prepared his wood destroying pests  
14 and organisms inspection report and his Completion Notice report.

15 98. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

16 **NINETEENTH CAUSE FOR DISCIPLINE**

17 **(Failure to Report Inaccessible Portions of Structure)**

18 **(Against Donald Lynn Archie II)**

19 99. Respondent Donald Lynn Archie II is subject to disciplinary action under sections  
20 8516(b)(6) and 8516(b)(7) in conjunction with California Code of Regulations, title 16, section  
21 1990(e) for failing to report that certain rafters and joists of the rear deck of the Lately Circle  
22 property were inaccessible when he prepared his wood destroying pests and organisms inspection  
23 report and his Completion Notice report.

24 100. Complainant realleges paragraphs 74 to 84 and their subparagraphs.

25 ///

26 ///

27 ///

28 ///

1 FACTUAL SUMMARY

2 THIRD OF THREE PROJECTS: WEST ALEXANDER AVENUE PROPERTY

3 101. The Board suspended Rose Termite, Inc.'s registration in September 2014 for failing  
4 to have a qualifying manager. At that time, the sole owner and President of the company was a  
5 woman named Yesenia Lopez.

6 102. In October 2014, a man purporting to act on behalf of Rose Termite, Inc. started  
7 texting with Juan Noe Romero, who holds Board-issued Operator License Number OPR 12462.  
8 In the texts, the man, who first said his name was "Edgar" and then said it was "Al" and then said  
9 it was "Edgar Alonzo", asked Mr. Romero if Rose Termite, Inc. could rent his license for \$900 a  
10 month. The man described himself as the husband of Dolores Chavez, who the man claimed was  
11 the owner of Rose Termite Inc. No mention was made in these texts of Yesenia Lopez, the  
12 registered owner of the company.

13 103. Mr. Romero entered into an agreement on November 1, 2014 with Dolores Chavez to  
14 agree to serve as Rose Termite, Inc.'s qualifying manager for \$900 a month for 24 months. At  
15 this time, Ms. Chavez had no ownership interest in and was not a director of the company.

16 104. After filing paperwork with the Board, on December 9, 2014, Mr. Romero became  
17 the company's qualifying manager.

18 105. On or about December 9, 2014, Rose Termite, Inc.'s sole ownership and presidency  
19 transferred from Yesenia Lopez, to Delores A. Chavez.

20 106. On or about, December 9, 2014, Rose Termite, Inc. also submitted proof of obtaining  
21 new general liability insurance.

22 107. As a result of Rose Termite, Inc.'s new insurance and new qualifying manager, on  
23 December 9, 2014 the Board ended the company's suspension.

24 108. On December 2, 2014, one week before its suspension ended, Rose Termite, Inc.  
25 through its Field Representative, Donald Lynn Archie II, performed a wood destroying pests and  
26 organisms inspection for a house on 388 West Alexander Avenue in the City of San Bernardino  
27 that was in escrow. Mr. Archie then prepared a separate completed inspection report. The  
28 inspection report stated that Mr. Archie found subterranean termites, drywood termites, and

1 fungus/dryrot in the house. His recommendations included chemically treating infestations,  
2 replacing damaged wood, application of low pressure spot spray, scraping and chemically treating  
3 fungus, and patching surface damage for a total cost of \$1,175.

4 109. The homeowner agreed to and did pay Rose Termite, Inc. \$1,175 to eliminate the  
5 wood destroying termites and fungi by taking the steps recommended in Mr. Archie's inspection  
6 report.

7 110. In mid-December 2014, Rose Termite, Inc. and Mr. Archie issued a Standard Notice  
8 of Work Completed and Not Completed (Completion Notice) for the Alexander Avenue property  
9 certifying their work had been done and the property was "now free of evidence of active  
10 infestation or infection in the visible and accessible areas."

11 111. On December 31, 2014, before the close of escrow on the West Alexander Avenue  
12 house, the new homeowners and their real estate agent walked-through the property and  
13 discovered that none of the work Rose Termite, Inc. purported to have done had been completed.

14 112. When the real estate agent complained to Rose Termite, Inc., they sent an unlicensed  
15 worker to the house. This worker tried to complete the work, but did not finish.

16 113. In January 2015, a Board specialist inspected the house and found it still had termites,  
17 fungus and decay fungi damage. He also confirmed that there was little evidence of work  
18 performed by Rose Termite, Inc. Among the problems he identified were:

- 19 a. Subterranean termite infestations;  
20 b. Drywood termite infestations at the kitchen wall voids, rear kitchen door, driveway  
21 abutment, garage porch wall, substructure rim joist, mudsill, and floor below the kitchen,  
22 including infestations in areas that were physically inaccessible for local chemical treatments;  
23 c. Fungus and decay fungi damage at the home's eaves, rafter tails, and fascia;  
24 d. Cellulose debris, form boards and form stakes in the substructure area; and  
e. No completion tag posted.

25 114. In January 2015, the Board's specialist prepared a Report of Findings identifying 14  
26 violations for Rose Termite, Inc.'s work at the West Alexander Avenue property. The Board staff  
27 sent the report to Rose Termite, Inc., Mr. Archie, and Mr. Romero, Rose Termite, Inc.'s new  
28 qualifying manager.

1 115. In late January 2015, a Board specialist met to discuss the Report of Findings for the  
2 West Alexander Avenue property with Mr. Romero, the qualifying manager. At that meeting, a  
3 man named Alonzo Sillas claimed to be Rose Termite, Inc.'s general manager. Mr. Sillas  
4 claimed that the Board specialist was making things up and trying to make him and Rose Termite,  
5 Inc. look bad.

6 116. Alonzo Sillas's involvement with Rose Termite, Inc. was unusual, since he was not  
7 listed among the company's employees, officers, or directors. Moreover, in January 15, 2015,  
8 Mr. Sillas was subject to a Board order prohibiting him from serving as an officer, director,  
9 associate, partner, qualifying manager, or branch office manager of any company registered with  
10 the Board – or from having any legal or beneficial interest in any company registered by the  
11 Board – other than a company named Foxx Termite, Inc. which holds Company Registration  
12 Certificate No. PR 6265.

13 117. Mr. Sillas was the President of Foxx Termite, Inc., which was disciplined by the  
14 Board, effective August 15, 2014, for, among other things, failing to complete structural pest  
15 control work, failing to comply with the Board's Reports of Findings and abatement orders,  
16 making inadequate and improper reports, and failing to supervise their employees. Notably, Mr.  
17 Sillas was also disciplined for representing himself as "Chris" when his first name was actually  
18 "Alonzo."

19 118. After the January 2015 meeting, Mr. Romero promptly resigned as Rose Termite,  
20 Inc.'s qualifying manager, and told the specialist Mr. Sillas had duped him. Mr. Romero  
21 admitted that he did not supervise the inspection or purported completion of the work on the West  
22 Alexander Avenue property.

23 119. Following Mr. Romero's resignation, the Board suspended Rose Termite, Inc.'s  
24 registration for failing to have a qualifying manager.

25 120. In February and March 2015, another licensed contractor completed an inspection and  
26 treatment of the termite and fungi infestations at the West Alexander Avenue property. They  
27 charged the new homeowners \$2,854 to complete the work.

28 ///



1 **TWENTIETH CAUSE FOR DISCIPLINE**

2 (Unlicensed Practice)

3 (Against Rose Termite, Inc. and Donald Lynn Archie II)

4 121. Respondents Rose Termite, Inc. and Donald Lynn Archie II are subject to disciplinary  
5 action under section 8550 because they engaged in the unlicensed practice of structural pest  
6 control by inspecting and making recommendations concerning the need for structural pest  
7 control work and making evaluations for job costs at the West Alexander Avenue property on  
8 December 2, 2015, when Rose Termite, Inc.'s license was still suspended at that time.

9 122. Complainant realleges paragraphs 101 to 120 and their subparagraphs.

10 **TWENTY-FIRST CAUSE FOR DISCIPLINE**

11 (Fraud)

12 (Against Rose Termite, Inc. and Donald Lynn Archie II)

13 123. Respondents Rose Termite, Inc. and Donald Lynn Archie II are subject to disciplinary  
14 action under section 8642 for fraud for representing and certifying in a completion notice that  
15 they had completed work on the West Alexander Avenue property, when, in fact, they had not  
16 done that work.

17 124. Complainant realleges paragraphs 101 to 120 and their subparagraphs.

18 125. Respondents knew the assertion that they had completed the work on the West  
19 Alexander Avenue property was false, and they intended to deceive the homeowners in order to  
20 receive payment for this work.

21 126. The homeowner's relied on this false representation in paying Rose Termite, Inc.  
22 \$1,175 for work never done.

23 **TWENTY-SECOND CAUSE FOR DISCIPLINE**

24 (Misrepresentation After Inspection)

25 (Against Rose Termite, Inc. and Donald Lynn Archie II)

26 127. Respondents Rose Termite, Inc. and Donald Lynn Archie II are subject to disciplinary  
27 action under section 8644 for fraud or misrepresentation after inspection for claiming to have  
28

1 completed and remediated the termite and decay fungi damage at the West Alexander Avenue  
2 property, when in fact, the company did not perform this work.

3 128. Complainant realleges paragraphs 101 to 120 and 125 to 126 and their subparagraphs.

4 **TWENTY-THIRD CAUSE FOR DISCIPLINE**

5 **(Failure to Complete Work)**

6 **(Against Rose Termite, Inc. and Donald Lynn Archie II)**

7 129. Respondents Rose Termite, Inc. and Donald Lynn Archie II are subject to disciplinary  
8 action under section 8638 because they failed to perform the work they contracted for at the West  
9 Alexander Avenue property.

10 130. Complainant realleges paragraphs 101 to 120 and 125 to 126 and their subparagraphs.

11 **TWENTY-FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to File Reports)**

13 **(Against Rose Termite, Inc.)**

14 131. Respondent Rose Termite, Inc. is subject to disciplinary action under sections  
15 8516(b) and 8518 for failing to file with the Board within 10 days the December 2014 inspection  
16 report and the December 2014 completion notice for the West Alexander Avenue property.

17 132. Complainant realleges paragraphs 101 to 120.

18 **TWENTY-FIFTH CAUSE FOR DISCIPLINE**

19 **(Failure to Properly Supervise as Qualifying Manager)**

20 **(Against Juan Noe Romero)**

21 133. Respondent Juan Noe Romero is subject to disciplinary action under section 8610(c)  
22 in conjunction with California Code of Regulations, title 16, section 1918 because he failed to  
23 supervise the daily business of Rose Termite, Inc. in its work on the West Alexander Avenue  
24 property. Mr. Romero was not available to observe, assist, and instruct Mr. Archie, or the  
25 unnamed employee who later came to the property after the homeowners complained, to secure  
26 full compliance with all the laws and regulations governing structural pest control.

27 134. Complainant realleges paragraphs 101 to 120.

28 ///

1 **TWENTY-SIXTH CAUSE FOR DISCIPLINE**

2 **(Failure to Pay Fine and Comply with Abatement Order)**

3 **(Against Donald Lyn Archie II)**

4 135. Respondent Donald Lynn Archie II is subject to disciplinary action under Business  
5 and Professions Code section 125.9(b)(5) and California Code of Regulations, title 16, section  
6 1920(d) for failing to comply with a Board citation.

7 136. On or about March 25, 2014, in a prior action, the Structural Pest Control Board  
8 issued Citation Number CF 2014 97 to Donald Archie, which ordered him to pay a \$700 fine and  
9 to comply with an abatement order that required him to take 7 hours of coursework on the Board's  
10 rules and regulations, 2 hours of general coursework, and 2 hours of coursework in Integrated  
11 Pest Management. That Citation is now final and is incorporated by reference as if fully set forth.

12 137. Mr. Archie never complied with that citation: he did not pay the \$700 fine or take the  
13 coursework.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Structural Pest Control Board issue a decision:

17 1. Revoking or suspending Company Registration No. PR 6992, issued to Rose Termite,  
18 Inc.;

19 2. Revoking or suspending Operator's License No. OPR 11121, issued to Bill Gerard  
20 Marsh;

21 3. Revoking or suspending Operator License No. OPR 12462, issued to Juan Noe  
22 Romero;

23 4. Revoking or suspending Field Representative Number FR 36431, issued to Donald  
24 Lynn Archie II ;

25 5. Under section 8624, if Operator License No. OPR 11121, issued to Bill Gerard Marsh  
26 is suspended or revoked, the Board may suspend or revoke the registration of any branch office  
27 for which Mr. Marsh is serving as qualifier;  
28

1           6. Under section 8624, if Operator License No. OPR 12462, issued to Juan Noe Romero,  
2 is suspended or revoked, the Board may suspend or revoke the registration of any branch office  
3 for which Mr. Romero is serving as qualifier;

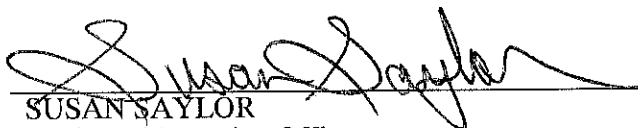
4           7. Prohibiting Bill Gerard Marsh, Juan Noe Romero, Donald Lynn Archie II, Yesenia  
5 Lopez, or Dolores Chavez from serving as an officer, director, associate, partner, qualifying  
6 manager or responsible managing employee of any registered company during the period that  
7 discipline is imposed on Company Registration No. PR 6992, Operator's License No. OPR  
8 11121, Operator's License No. OPR 12462 or Field Representative's License No. FR 36431.

9           8. Ordering Rose Termite, Inc., Bill Gerard Marsh, Juan Noe Romero and Donald Lynn  
10 Archie II to pay the Structural Pest Control Board the reasonable costs of the investigation and  
11 enforcement of this case, pursuant to Business and Professions Code section 125.3;

12           9. Ordering Rose Termite, Inc., Bill Gerard Marsh, Juan Noe Romero and Donald Lynn  
13 Archie II to pay restitution of all damages according to proof suffered by owners of the incident  
14 properties as a condition of probation in the event probation is ordered; and

15           10. Taking such other and further action as deemed necessary and proper.

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17  
18 DATED: 9/3/15

  
SUSAN SAYLOR  
Registrar/Executive Officer  
Structural Pest Control Board  
Department of Consumer Affairs  
State of California  
Complainant

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